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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

FANYA YOUNG,

Plaintiff,

No. C 14-03627 WHA

v.

THIRD AND MISSION ASSOCIATES, LLC, et al.,

Defendants.

**ORDER DENYING MOTION FOR  
SANCTIONS, GRANTING  
MOTION TO DISMISS, AND  
VACATING HEARING****INTRODUCTION**

In this landlord-tenant dispute, the tenant has moved for sanctions and the landlord has moved to dismiss. For the reasons stated herein, the motion for sanctions is **DENIED**. The motion to dismiss is **GRANTED**. The October 9 hearing is hereby **VACATED**.

**STATEMENT**

A prior order recounted the history of this action so it will not be repeated herein (Dkt. No. 33). In brief, this is a landlord-tenant dispute involving rent payments. The landlord brought an unlawful detainer action in state court and prevailed. Specifically, the landlord and tenant entered a stipulation setting forth a payment plan, which the tenant then allegedly violated. The state court entered judgment against the tenant and in favor of the landlord. The tenant moved to dismiss the state court proceeding, arguing, *inter alia*, that she resided in a “subsidized apartment,” the landlord violated “federal notice requirements,” and the landlord “charged unwarranted late fees.” The tenant’s motions were denied. The state court found that the tenant failed to show that her tenancy was governed by federal notice requirements, failed to provide any

1 evidence that the landlord failed to comply with the notice requirements, and dismissal was not  
2 warranted. The judgment became final and no timely appeal was filed. An eviction was  
3 scheduled.

4 The tenant, Attorney Fanya Young, then began this action in federal court. Two hearings  
5 occurred and the tenant was heard on both occasions. The tenant was then given time to depose a  
6 non-party and conduct some discovery. Her motion for a preliminary injunction was denied.

7 Now, the tenant moves for sanctions and seeks attorney's fees, expenses, costs, \$5,000 for  
8 her bond, and \$15,000 for "willful misrepresentations." The landlord moves to dismiss the  
9 complaint. No response to the landlord's motion was timely filed, even though the motion was  
10 mailed to the address then provided in ECF and electronically notified of the filing via an email to  
11 an email address provided in ECF. In any event, the tenant was given another chance to respond.  
12 No opposition was filed, but the tenant, without obtaining leave to do so, filed a "first amended  
13 complaint." The proposed first amended complaint was incomplete, cutting off on page 21. Also  
14 appended were voluminous exhibits, for a total submission of 151 pages, which the Court has  
15 reviewed. The tenant's submission was improper, nevertheless, this order will consider it. The  
16 time to oppose the motion to dismiss has elapsed.

## 17 ANALYSIS

### 18 1. MOTION FOR SANCTIONS.

19 The tenant's motion is procedurally defective because Attorney Young failed to comply  
20 with Rule 11(c)(2). That failure precludes her from obtaining a sanctions award. *Radcliffe v.*  
21 *Rainbow Construction Company*, 254 F.3d 772, 789 (9th Cir. 2001). In addition, the hodgepodge  
22 of documents submitted do not show that any misrepresentations occurred. The tenant also failed  
23 to provide any proof supporting the unspecified amount of fees, expenses, and costs sought.  
24 Accordingly, the motion is **DENIED**.

### 25 2. MOTION TO DISMISS.

#### 26 A. Fair Credit Reporting Act.

27 The complaint fails to contain sufficient factual matter, accepted as true, to state a Fair  
28 Credit Reporting Act ("FCRA") claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S.

1 662, 678 (2009). All of the references to the FCRA in the complaint are conclusory or in error.  
2 Indeed, the sections cited in the complaint appear in the Fair Debt Collection Practices Act, not  
3 the FCRA. The FCRA claim is **DISMISSED**.

4 The proposed first amended complaint, which plaintiff filed without obtaining leave to do  
5 so, fails to state a claim under the FCRA. Accordingly, the FCRA claim is **DISMISSED**.

6 **B. Section 247.**

7 The problems with the claims invoking Section 247 of Title 24 of the Code of Federal  
8 Regulations were explained at length at the August 19 hearing and in the September 4 order. In  
9 brief, the tenant litigated these issues against the landlord in state court. The tenant's motions  
10 were denied and judgment was entered. The tenant is precluded from re-litigating these same  
11 issues in a later-filed, new federal action. Accordingly, the Section 247 claims are **DISMISSED**.

12 The proposed first amended complaint invokes Section 247 but re-characterizes the claim  
13 as a "procedural due process" claim. Defendants, however, are private entities and the proposed  
14 first amended complaint fails to identify a deprivation of an interest protected by the due process  
15 clause. Accordingly, the procedural due process claim is **DISMISSED**.

16 **C. Fair Debt Collection Practices Act.**

17 The complaint invokes the Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.*  
18 ("FDCPA"), arguing that defendants misrepresented the tenant's debts, collected unauthorized  
19 fees, demanded payments in a "harassing" manner, and employed "unfair" collection methods.  
20 The tenant, however, voluntarily waived these claims when she entered into a stipulation with the  
21 landlord. That stipulation was accepted by the state court judge. Therein, the tenant agreed to a  
22 specific payment schedule in exchange for possession of the premises, according to the terms of  
23 the stipulation. She agreed that in the event of non-compliance, the landlord was entitled to a writ  
24 of execution for money and possession. She waived "any and all rights to a noticed motion on the  
25 entry of a judgment pursuant to [the] Stipulation." When the landlord obtained a writ of  
26 execution for money and possession, she argued in state court that the landlord alleged  
27 "inaccurate" amounts, charged "unwarranted late fees," "failed to credit payments made," and  
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1 "retaliated" against her (Dkt. Nos. 22-2, 25). The state court rejected the tenant's arguments and  
2 judgment was entered against her. Accordingly, the FDCPA claims are **DISMISSED**.

3 The proposed first amended complaint states essentially the same claims for relief as in  
4 the complaint. The proposed fifth claim for relief is also incomplete, ending at paragraph 130. In  
5 any event, for the same reasons stated above, the FDCPA claims are **DISMISSED**.

6 **D. State-Law Claim.**

7 The complaint invokes California Civil Code Section 3294. This order declines to  
8 exercise supplemental jurisdiction over the state-law claim since all of the federal claims have  
9 been dismissed. Accordingly, the state-law claim is **DISMISSED**. The proposed first amended  
10 complaint does not plead any state-law claims.

11 **CONCLUSION**

12 For the reasons stated herein, the motion for sanctions is **DENIED**. The motion to dismiss  
13 is **GRANTED**. All claims in the complaint and proposed first amended complaint are **DISMISSED**.  
14 The October 9 hearing and case management conference are hereby **VACATED**. Since no claims  
15 remain, judgment shall issue in a separate order.

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17 **IT IS SO ORDERED.**

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19 Dated: September 30, 2014.

  
20 WILLIAM ALSUP  
21 UNITED STATES DISTRICT JUDGE

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